

possession. With respect I am in full agreement with him, for Exhibit "A1" annexed to the affidavit of Palaniappa sworn on December 28, 1967 shows that various books of relevant years, as well as other documents, produced in the court of the subordinate judge at Devakottai, were duly returned to the appellant's advocate in India and acknowledged by the latter on August 18, 1966. It is, furthermore, difficult to imagine that the appellant, having claimed throughout that he was sole proprietor of the PL. A.R. Firm, would have parted at any time with the possession of some material books, while retaining others, to any other person, least of all to his opponent. And it is to be remembered that they had been estranged since 1949, if not earlier.

Since the order of Ismail Khan J. has not been carried out by reason of this appeal, there will be an order extending the time for filing of accounts, as ordered, allowing the appellants three months from the date hereof to comply. The appeal is dismissed with costs; the deposit of \$500 to be paid out to the respondent to account of his taxed costs.

*Appeal dismissed.*

Solicitors: *Atma Singh Gill & Co.; Lovelace & Hastings.*

### GAN SOO SWEE & ANOR. v. RAMOO

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.)  
November 7, 1968]

[Singapore—Federal Court Civil Appeal No. Y24 of 1968]

*Negligence — Highway — Junction controlled by traffic lights — Traffic accident — Defective traffic lights — Onus of proof.*

*Damages — Personal injuries — Accident at junction controlled by traffic lights — Defective traffic lights — Whether either or both drivers were negligent.*

This was an appeal against the decision of the High Court, ([1968] 2 M.L.J. 66) which had given judgment for the plaintiff in his claim for damages for personal injuries sustained as a result of a collision between a taxi and a lorry at a junction. The junction was controlled by traffic lights and it appeared that at the relevant time the traffic lights were defective. Buttrose J. found that the lights were defective but held that the drivers of the taxi and the lorry were aware of this and he apportioned the blame at 75% on the lorry driver and 25% on the driver of the taxi. The appellants appealed.

Held, allowing the appeal: there was no evidence that either the driver of the lorry or the driver of the taxi knew that the traffic lights were defective and in the circumstances the plaintiff had failed to prove that either or both the drivers were negligent.

*Case referred to:—*

(1) *Eva v. Reeves* [1938] 2 K.B. 393.

FEDERAL COURT.

*K.E. Hilborne* for the 1st appellant, (2nd defendant).

*Yap Tyou Min* for the 2nd appellant, (1st defendant).

*H.E. Cashin* for the respondent, (plaintiff).

*Cur. Adv. Vult.*

**Wee Chong Jin C.J.** (delivering the judgment of the court): On the morning of the 10th of July, 1966, a Sunday, the plaintiff was a passenger in a taxi driven by the 2nd defendant which was proceeding in a southerly direction along Dunearn Road, a one-way carriageway. At the same time the 1st defendant was driving a motor lorry laden with sand in a westerly direction along Whitley Road which was a dual carriageway. The two vehicles collided with each other in the middle of the junction of these two roads and as a result of the collision the plaintiff suffered a severe injury, namely a compound fracture dislocation of the left elbow joint. That junction is a controlled junction, controlled by traffic lights operating automatically.

The plaintiff commenced an action in the High Court of Singapore naming the driver of the motor lorry as the 1st defendant and the driver of the taxi in which he was travelling as the 2nd defendant alleging that the collision was caused by the negligence of the 1st defendant and by the negligence of the 2nd defendant or alternatively, by the negligence of one or other of them in the driving of their respective motor vehicles.

The particulars of negligence alleged against the lorry driver, the 1st defendant, in the statement of claim were as follows:—

- (a) Failing to keep any or any proper lookout.
- (b) Driving at an excessive speed in the circumstances.
- (c) Driving from a minor road on to a major road when it was unsafe so to do and without regard for traffic on the major road.
- (d) Failing to give any or any proper warning of his approach and of his intention to drive on to the said major road.
- (e) Failing to give way to vehicles travelling on his right.
- (f) Failing to apply his brakes in time or at all or so to steer or control his lorry as to avoid the said collision.
- (g) Driving against the traffic lights.

The particulars of negligence alleged against the taxi driver, the 2nd defendant, in the statement of claim were as follows:—

- (a) Failing to keep any or any proper lookout.
- (b) Driving at an excessive speed in the circumstances.
- (c) Failing to give any or any proper warning of his approach.

(d) Driving against the traffic lights.

(e) Failing to apply his brakes in time or at all or so to steer or control his taxi as to avoid the said collision.

The lorry driver, the 1st defendant, in his defence denied that the collision was caused by the alleged or any negligence on his part and pleaded that it was solely caused or contributed to by the negligence of the taxi driver, the 2nd defendant, and adopted the particulars of negligence alleged against the 2nd defendant in the plaintiff's statement of claim. The 1st defendant also pleaded that the 2nd defendant had failed to take any or any sufficient precautions in the safety of his taxi and his passengers therein when entering the said junction of Dunearn Road and Whitley Road.

The taxi driver, the 2nd defendant, in his defence denied that the collision was caused by the alleged or any negligence on his part and pleaded that it was caused solely or alternatively contributed to by the negligence of the 1st defendant in the driving of his motor lorry, the particulars of negligence whereof being as alleged against the 1st defendant in the plaintiff's statement of claim.

At the trial before Buttrose J. the plaintiff, who was seated beside the 2nd defendant, stated that approaching the junction he noticed nothing unusual about the traffic lights and they were showing green when the taxi entered the junction. He said that he first saw the traffic lights when he was 15 yards away. He first saw the lorry when it was very near the taxi and inside the intersection. He guessed the speed of the lorry at 40 miles per hour and the speed of the taxi also at 40 miles per hour.

A police officer was called by the plaintiff to give evidence as to the damage suffered by both vehicles but in cross-examination by counsel for the 1st defendant he said that when he was at the scene the traffic lights were defective in that the lights facing Whitley Road changed from green to amber and back to green without ever changing to red and that the lights facing Dunearn Road changed from green to amber to red very quickly. Finally, he said that at this junction the traffic lights both for Whitley Road and Dunearn Road traffic at one stage simultaneously showed green.

The 1st defendant, the lorry driver, said that he began to look at the traffic lights when he was 40 to 50 feet from the junction and they showed green. He slowed down a little as he approached the junction and when he was 15 feet from the junction the traffic lights were still at green. He then accelerated and when he was 12 feet inside the junction the collision occurred. At that time his speed was 15 miles

A per hour. There was no traffic jam at that time and there was no other traffic.

He called as a witness a police officer who came on the scene soon after the accident and who stated that he saw the traffic lights facing Whitley Road change from green to amber and then to green again.

B The 2nd defendant elected to call no evidence, submitting that on the evidence there was no case for him to answer.

C Buttrose J. held that both defendants were negligent and apportioned the blame as to 75 per cent on the 1st defendant and as to 25 per cent on the 2nd defendant. In his judgment he said that:—

"Both the defendants . . . were guilty of negligence in failing to keep any or any proper look out and in failing to drive their respective vehicles with that degree of care and caution which the circumstances of the case obviously required and the situation demanded."

D He found that the traffic lights controlling this junction were not functioning properly at the time of the collision and although he did not specifically find that both defendants knew that they were defective it is clear that he came to the conclusion that both defendants knew that the traffic lights were defective and knew in what manner they were defective. This is contained in that portion of his judgment in which he said:—

E "I consider that the rapid changing of his (the 2nd defendant's) appropriate traffic lights albeit in proper sequence should have been almost as effective a warning that something was wrong as the absence of any red light showing should have been to the 1st defendant."

F Both defendants appealed and both contend at the hearing of the appeal that the trial judge's findings that the traffic lights were defective at the time of the collision and that each of them knew the traffic lights were defective and knew the nature of the defect in relation to each of them were wrong and contrary to the evidence.

G We are of the opinion that on the evidence it was open to the trial judge to find that at the time of the collision the traffic lights controlling this junction were defective and were defective in the manner described by the police witnesses. It does not follow, however, because they were defective, that the defendants knew that they were defective.

H In our judgment there is no evidence that the lorry driver, the 1st defendant, knew that the traffic lights controlling his entry into this junction were defective. In fact the evidence appears to be all the other way. The 1st defendant stated that when he first saw the traffic lights he was 40 to 50 feet from the junction and the lights were showing green. When he was 15 feet from the junction the lights were still green and he accelerated and entered the

junction at a speed of 15 miles per hour. The police evidence is that the lights controlling Whitley Road traffic were normal except for the failure to change to red from amber.

The trial judge also found the 1st defendant negligent in failing to keep a proper look-out presumably because he never saw the other vehicle, the taxi, "until the collision had to all intents and purposes taken place". The law in relation to junctions controlled by traffic lights is clear. The driver of a motor vehicle entering a cross-roads junction when the lights are green in his favour is entitled to assume that the traffic approaching the junction from his left or right would obey the red signal light prohibiting such traffic from entering the junction (see *Eva v. Reeves* <sup>(1)</sup>). He is under no duty towards traffic entering the junction in disobedience to the red light to assume or to provide for the possibility of such entry. It follows that the trial judge was wrong in holding that the 1st defendant was negligent in failing to keep a proper look-out.

The trial judge also found it was "palpably obvious to any one approaching it be he pedestrian or motorist" that the traffic lights controlling the entire junction were defective and not functioning properly because the police officers who arrived at the scene had no difficulty in noticing that state of affairs and because earlier on cars were all tangled up at another parallel junction controlled by a similar set of traffic lights. We find great difficulty in understanding how the trial judge arrived at this finding as on the plaintiff's own evidence he himself noticed nothing unusual about the lights. The real question to be decided on this aspect of the case was whether either of the defendants knew or ought to have known, if he had kept a proper look-out, that the lights controlling his entry into the junction were defective and not functioning properly.

In the case of the 1st defendant, on the evidence, it was impossible to say that it was palpably obvious to him, a motorist, that the lights controlling his entry into the junction were defective and not functioning properly. Nor was it possible, on the evidence, to say that if he had kept a proper look-out he would have seen or would have been aware that these lights were not functioning properly.

In the case of the 2nd defendant, the evidence is different. The lights controlling his entry into the junction were changing rapidly, albeit in proper sequence, from green to amber to red to green to amber to red and so on. It may well be if there was sufficient evidence it could be held that had he kept a proper look-out in relation to the lights controlling his entry he would have noticed this malfunction and noticing this ought to have taken the necessary precau-

A tions when entering this cross-roads junction at a time when to his knowledge the lights controlling it were not functioning properly. He chose not to give evidence and there is therefore no evidence at all as to when he first looked at the lights when approaching the junction. On the other hand there is no evidence as to the extent of the malfunctioning of the lights controlling his entry into the junction. The only evidence is that the lights "changed rapidly" in its proper sequence. How rapid this change was at the material time no one knows and it would be idle and wrong to speculate. It was for the plaintiff to prove that the change was so rapid that the 2nd defendant must have known the traffic lights controlling the junction were defective if he had kept a proper look-out. The case as pleaded by the plaintiff against him was in the usual common form and the case against him at the trial appeared to be that although he entered the cross-roads junction with the traffic lights in his favour he was driving at an excessive speed in the circumstances and failed to see the lorry, coming from his left, entering the junction at the same time in spite of the lights being against the lorry. On the pleadings and on the case as presented at the trial against the 2nd defendant we are of the opinion that the plaintiff cannot succeed against him and the trial judge was wrong in holding him negligent and blameworthy to the extent of having to bear 25 per cent of the blame for the injuries sustained by the plaintiff.

F The result is unfortunate but we have here a case where the plaintiff was alleging that either the lorry driver or the taxi driver or both were responsible for the accident. He had therefore to prove a state of facts from which the reasonable inference to be drawn was that *prima facie* one if not both drivers had been negligent before he is entitled to call on both defendants for an answer. To make a *prima facie* case he must prove facts from which in the absence of an explanation liability could properly be inferred. In the case of the taxi driver, the 2nd defendant, in whose taxi he was at the time of the accident, his evidence proved that the 2nd defendant was not to blame for the accident. In the case of the lorry driver, the 1st defendant, the evidence at the trial clearly establishes that no blame could be imputed to him for the accident.

H For all these reasons the appeals of both defendants are allowed and in the result the judgment of Buttrose J. is set aside with costs here and in the court below.

I

*Appeal allowed.*

Solicitors: *Hilborne & Co.; Battenberg & Talma; Murphy & Dunbar.*